

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LG DISPLAY CO., LTD.,)
Plaintiff,)
v.) C.A. No. 06-726-JJF
AU OPTRONICS CORPORATION, et al.,) C.A. No. 07-357-JJF
Defendants.)) **CONSOLIDATED CASES**

**AU OPTRONICS CORPORATION'S RESPONSE TO MOTION
TO CONSOLIDATE AND TO EXTEND DISCOVERY LIMITS
FILED BY DEFENDANT CHI MEI OPTOELECTRONICS CORPORATION**

YOUNG CONAWAY STARGATT & TAYLOR LLP
Richard H. Morse (#531) [rmorse@ycst.com]
John W. Shaw (#3362) [jshaw@ycst.com]
Karen L. Pascale (#2903)
[kpascale@ycst.com]
The Brandywine Building
1000 West St., 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600

PAUL HASTINGS JANOFSKY & WALKER LLP
Vincent K. Yip
Terry D. Garnett
Peter J. Wied
Jay C. Chiu
Katherine F. Murray
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000

WILSON SONSINI GOODRICH & ROSATI, P.C.
Ron E. Shulman
Julie M. Holloway
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: (650) 493-9300

M. Craig Tyler
Brian D. Range
8911 Capital of Texas Highway North
Westech 360, Suite 3350
Austin, Texas 78759-8497
Telephone: (512) 338-5400

*Attorneys for AU Optronics Corporation and
AU Optronics Corporation America*

July 14, 2008

I. PRELIMINARY STATEMENT

AU Optronics Corporation (“AUO”) does not oppose Chi Mei Optoelectronics Corporation’s (“CMO”) Motion to Consolidate the case recently transferred from the Eastern District of Texas, *Chi Mei Optoelectronics Corporation v. LG Philips LCD Co., Ltd.*, No. 2:07-CV-176 (TJW), with this action (D.I. 295). AUO also does not oppose CMO’s request for a two-month extension to accommodate discovery of CMO’s offensive claims, which were only recently transferred to this Court.

In the event the Court is inclined to grant CMO’s extension, however, AUO requests that the Court apply the two-month extension to all remaining deadlines in this case, including the trial date, so that the schedule remains consistent with the Court’s prior rulings. Without a concomitant extension of the remaining deadlines, the parties would have to exchange expert reports before fact discovery is completed, and may need to file dispositive motions before receiving expert reports or completing expert discovery. Under AUO’s proposed new schedule, subject to the Court’s availability, trial in this action would be set for August 3, 2009. As CMO and LG Display were previously scheduled to commence trial on CMO’s claims in Texas on August 3, 2009, an August trial in this case should not pose a scheduling problem for any party.

II. THE COURT SHOULD EXTEND ALL REMAINING DEADLINES BY TWO MONTHS.

In its Motion, CMO requests that the Court extend the current fact discovery, which is set for December 17, 2008, to February 17, 2009, to allow CMO adequate time to develop its offensive case. CMO also states in its Motion that it is not seeking an extension of any other discovery deadlines, other than the deadline for motions to amend pleadings. However, to avoid scheduling conflicts and ensure that the new schedule complies with the Court’s prior

rulings, in the event the Court extends the fact discovery deadline by two months, it also should extend the remaining deadlines in this case by two months.

An extension of fact discovery by two months also should include an extension of expert discovery deadlines. Under the Court's Rule 16 Scheduling Order, the parties are currently scheduled to submit expert reports by January 12, 2009, and to submit rebuttal reports by February 9, 2009. *See D.I. 175 at ¶ 4(g).* If the Court were to move the fact discovery deadline to February 17, 2009, while retaining the expert reporting deadlines of January 12, 2009 and February 9, 2009, and the expert discovery cut-off of March 6, 2009, then fact discovery would not close until after the parties exchange expert reports, and the parties would have only about two weeks following the close of fact discovery to conduct expert discovery. This schedule would appear to conflict with the Court's instruction in February that the parties complete fact discovery "before any expert discovery or reporting takes place." *See D.I. 299, Ex. A at 10:1-5.* To avoid this conflict, in the event that the Court extends the fact discovery deadline until February 17, 2009, it should also extend the expert reporting deadlines for an additional two months, to March 12, 2009 and April 9, 2009, respectively, and extend the expert discovery cut-off from March 6, 2009 to May 6, 2009.

In addition, if the Court extends the fact discovery deadline to February 17, 2009, it also should extend the dispositive motion deadline by two months. Currently, the dispositive motion deadline is March 16, 2009, just one month after CMO's proposed discovery cut-off date, and presumably before the exchange of rebuttal expert reports and the close of expert discovery (assuming the Court extends the expert reporting and discovery deadlines by two months.) *See D.I. 175 at ¶ 7.* This would not give the parties sufficient time to prepare dispositive motions, as they may not have completed the exchange of expert reports by this

date. This conflict can be resolved by extending the dispositive motion deadline by two months, to May 15, 2009. This new deadline would accommodate the proposed deadlines for the close of fact discovery (February 17, 2009) and expert reporting (March 12, 2009 and April 9, 2009).

Assuming the Court extends the deadlines for filing dispositive motions as noted above, this would mean that such motions could not be heard before June 12, 2009.¹ However, under the current schedule, the trial of this action is scheduled for June 2, 2009. D.I. 175 at ¶ 10(a) and (b). Thus, if the Court intends to extend fact discovery to February 17, 2009, then it also should extend the trial date by two months, to August 2, 2009, so that the Court has an opportunity to hear and rule on dispositive motions prior to trial.

Provided the Court is available for trial in August, an August trial date appears to be convenient for all parties. During a recent meeting of counsel to discuss the issues raised in CMO's Motion, counsel for Plaintiff LG Philips suggested that Plaintiff was not available for an August trial, but failed to elaborate on its position. However, this representation is belied by the fact that, before CMO's offensive case was transferred to this Court, LG Philips and CMO were already scheduled to commence trial in the Eastern District of Texas on August 3, 2009. See D.I. 299 at p. 8. Other than the conclusory statement by Plaintiff's counsel that August is not convenient, there is no indication that CMO or LG Philips are no longer available for trial in August. Thus, a minimal two-month extension for all remaining deadlines would not prejudice any party.

¹ Pursuant to D. Del. LR 7.1.2 and Fed. R. Civ. P. 6(d), under the proposed May 15, 2009 deadline for filing dispositive motions, oppositions to dispositive motions would be due June 4, 2009, and replies would be due June 15, 2009.

III. CONCLUSION

In the event that the Court is inclined to grant CMO's request to extend the fact discovery deadline by two months to accommodate CMO's newly added claims, AUO respectfully requests that the Court also extend the subsequent deadlines by two months, so that that the parties have sufficient time to conduct expert discovery, file dispositive motions, and prepare for trial.

YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

July 14, 2008

Richard H. Morse (#531) [rmorse@ycst.com]
John W. Shaw (#3362) [jshaw@ycst.com]
Karen L. Pascale (#2903) [kpascale@ycst.com]
The Brandywine Building
1000 West St., 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600

PAUL HASTINGS JANOFSKY & WALKER LLP

Vincent K. Yip
Terry D. Garnett
Peter J. Wied
Jay C. Chiu
Katherine F. Murray
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Telephone: (213) 683-6000

- and -

WILSON SONSINI GOODRICH & ROSATI, P.C.

Ron E. Shulman
Julie M. Holloway
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: (650) 493-9300

M. Craig Tyler
Brian D. Range
8911 Capital of Texas Highway North
Westech 360, Suite 3350
Austin, Texas 78759-8497
Telephone: (512) 338-5400

*Attorneys for AU Optronics Corporation and
AU Optronics Corporation America*

CERTIFICATE OF SERVICE

I, Karen L. Pascale, Esquire, hereby certify that on July 14, 2008, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Richard D. Kirk [rkirk@bayardfirm.com]
 Ashley B. Stitzer [astitzer@bayardfirm.com]
 BAYARD, P.A.
 222 Delaware Avenue, Suite 900
 P.O. Box. 25130
 Wilmington, DE 19899-5130
 (302) 655-5000

Attorneys for LG Display Co., Ltd. and LG Display America, Inc.

Philip A. Rovner [provner@potteranderson.com]
 David E. Moore [dmoore@potteranderson.com]
 POTTER, ANDERSON & CORROON
 6th Floor, Hercules Plaza
 1313 N. Market Street
 Wilmington, DE 19801

*Attorneys for Chi Mei Optoelectronics Corporation and
 Chi Mei Optoelectronics USA, Inc.*

I further certify that I caused a copy of the foregoing document to be served by e-mail on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

By E-mail

Gaspare J. Bono [gbono@mckennalong.com]
 Matthew T. Bailey [mbailey@mckennalong.com]
 R. Tyler Goodwyn, IV [tgoodwyn@mckennalong.com]
 Lora A. Brzezynski [lbrzezynski@mckennalong.com]
 Cass W. Christenson [cchristenson@mckennalong.com]
 MCKENNA LONG & ALDRIDGE LLP
 1900 K Street, NW
 Washington, DC 20006
 (202) 496-7500

Attorneys for LG Display Co., Ltd. and LG Display America, Inc.

Jonathan S. Kagan [jkagan@irell.com]
 Alexander C.D. Giza [agiza@irell.com]
 IRELL & MANELLA LLP
 1800 Avenue of the Stars
 Suite 900
 Los Angeles, CA 90067
 (310) 277-1010

*Attorneys for Chi Mei Optoelectronics Corporation and
 Chi Mei Optoelectronics USA, Inc.*

YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

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Richard H. Morse (#531) [rmorse@ycst.com]
John W. Shaw (No. 3362) [jshaw@ycst.com]
Karen L. Pascale (No. 2903) [kpascale@ycst.com]
The Brandywine Building
1000 West St., 17th Floor
P.O. Box 391
Wilmington, Delaware 19899-0391
Phone: 302-571-6600

*Attorneys for AU Optronics Corporation and
AU Optronics Corporation America*